

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 FEA-01 ACDA-05 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 OFA-01 COME-00

DLOS-04 DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01

TRSE-00 H-02 INR-07 INT-05 IO-10 JUSE-00 NSAE-00

NSC-05 NSF-01 OES-03 OMB-01 PA-01 PM-04 PRS-01 SP-02

SS-15 USIA-06 OIC-02 /119 R

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EB/TT/MA:SVSMITH

EUR/NE:APINKNEY EUR/NE:PFCANNEY

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EUR/SOV:JTREICHEL EUR/CE:KAKURZE

EUR/WE:WHMARSH

EUR/NE:MR.SHALLER

EUR/WE:KSHIRLEY

EUR/NE:MR.SCHUMATE

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R 162343Z OCT 75

FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY PARIS

AMEMBASSY LONDON

AMEMBASSY THE HAGUE

AMEMBASSY STOCKHOLM

AMEMBASSY OSLO

AMEMBASSY COPENHAGEN

INFO AMEMBASSY MOSCOW

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E.O. 11652: N/A

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TAGS: UR, IMCO, EWWT

SUBJECT: SOVIET RESERVATION TO CIVIL LIABILITY CONVENTION

1. DEPARTMENT HAS RECENTLY RECEIVED FROM IMCO A COPY OF THE SOVIET INSTRUMENT OF ACCESSION TO THE INTERNATIONAL CONVENTION FOR CIVIL LIABILITY FOR OIL POLLUTION DAMAGE. SOVIETS HAVE MADE RESERVATION WHICH WE BELIEVE WOULD RELIEVE THEM OF SUBSTANTIALLY ALL OF THEIR OBLIGATIONS UNDER THE CONVENTION, WHILE ATTEMPTING TO RETAIN BENEFITS. WE BELIEVE THIS RESERVATION IMPERMISSIBLE AND WOULD LIKE TO SEND NOTE TO IMCO SO STATING.

2. ADDRESSEES POSTS HOST GOVERNMENTS ARE ALL PARTIES TO INTERNATIONAL CONVENTION FOR CIVIL LIABILITY FOR OIL POLLUTION DAMAGE. U.S. HAS SIGNED CONVENTION BUT IS NOT YET PARTY.

3. WE REQUEST YOU TO PROVIDE DRAFT U.S. GOVERNMENT NOTE CONTAINED PARA 4 BELOW TO HOST GOVERNMENT FOR COMMENT. YOU SHOULD STATE THAT WE WOULD CONSIDER IT DESIRABLE IF HOST GOVERNMENT SENT NOTE MAKING SAME LEGAL POINTS TO IMCO. WE ALSO BELIEVE IT DESIRABLE TO COORDINATE SUBSTANCE OF OUR NOTES SO THAT LEGAL POSITION IS THE SAME.

4. BEGIN TEXT: THE UNITED STATES GOVERNMENT HAS THE HONOR TO REFER TO NOTE CLC/CIRC.13, REF. A1/H/3.03, DATED JUNE 30, 1975, FROM THE INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION. THIS NOTE TRANSMITS NOTICE OF THE DEPOSIT OF AN INSTRUMENT OF ACCESSION BY THE UNION OF SOVIET SOCIALIST REPUBLICS ON JUNE 24, 1975, TO THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE. THE NOTE ALSO CONTAINS THE TEXTS OF A RESERVATION AND A STATEMENT.

THE SOVIET UNION HAS MADE THE FOLLOWING RESERVATION:
"THE UNION OF SOVIET SOCIALIST REPUBLICS DOES NOT CONSIDER ITSELF BOUND BY THE PROVISIONS OF ARTICLE XI, PARAGRAPH 2 OF THE CONVENTION, AS THEY CONTRADICT THE PRINCIPLE OF THE JUDICIAL IMMUNITY OF A FOREIGN STATE".
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PARAGRAPH 2 OF ARTICLE XI PROVIDES: "WITH RESPECT TO SHIPS OWNED BY A CONTRACTING STATE AND USED FOR COMMERCIAL PURPOSES, EACH STATE SHALL BE SUBJECT TO SUIT IN THE JURISDICTIONS SET FORTH IN ARTICLE IX AND SHALL WAIVE ALL DEFENCES BASED ON ITS STATUS AS A SOVEREIGN STATE".

THE UNITED STATES CONSIDERS THAT THE SOVIET'S
RESERVATION IS IMPERMISSIBLE BECAUSE IT IS INCONSISTENT
WITH THE OBJECT AND PURPOSE OF THE CONVENTION. THE
EFFECT OF THE RESERVATION WOULD BE TO RELIEVE THE SOVIET
UNION OF MOST OF THE OBLIGATIONS IMPOSED BY THE CONVENTION,
SINCE ALL SOVIET TANKERS WOULD BE STATE-OWNED VESSELS
OTHERWISE SUBJECT TO PARAGRAPH 2 OF ARTICLE XI. THIS
WOULD EFFECTIVELY RENDER THE CONVENTION MEANINGLESS WITH
REGARD TO ANY POTENTIAL EFFORTS ON THE PART OF OTHER
STATES PARTY TO ENFORCE ITS PROVISIONS AGAINST THE SOVIET
UNION. THE UNITED STATES GOVERNMENT, THEREFORE, DOES NOT
CONSIDER THE SOVIET INSTRUMENT OF ACCESSION TO BE
EFFECTIVE, AND STATES THAT AT SUCH TIME AS THE UNITED
STATES RATIFIES THE CONVENTION, IT WILL HAVE NO TREATY
RELATIONSHIPS WITH THE GOVERNMENT OF THE SOVIET UNION
UNDER THE CONVENTION. KISSINGER

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